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266 NLRB No. 42

D--9715
Beltsville, MD

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MARYLAND EQUIPMENT, INC.

and

Case 5--CA--14581

DRIVERS, CHAUFFEURS AND
HELPERS LOCAL UNION NO. 639,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA

DECISION AND ORDER

Upon a charge filed on August 6, 1982,¹ and amended on August 23 and 30, by Drivers, Chauffeurs and Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Maryland Equipment, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 5, issued a complaint on September 29, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as

¹ All dates are in 1982.

amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

By letter dated October 7, Respondent requested an extension of time for filing an answer.² Although granted two such extensions, Respondent has not filed an answer to the complaint.

On November 26, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment with exhibits attached. Subsequently, on December 7, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not file a response to the Notice To Show Cause; therefore, the allegations of the complaint and the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

² The letter was from Respondent's attorneys who stated that Respondent needed the extension in order to obtain new representation; the attorneys withdrew from the case as a result of Respondent's nonpayment of legal fees.

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing issued on September 29 specifically states that unless an answer to the complaint is filed by Respondent within 10 days service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." The answer was due on October 12. By letter dated October 7, Respondent requested an extension of time to file its answer. By phone conversation, and letter dated October 26, the return receipt for which shows Respondent received it on October 28, the General Counsel advised Respondent that the time for filing an answer had been extended to November 1, and that unless an answer was timely filed, he would file a Motion For Summary Judgment. On November 5, no answer had been received and the Regional Director issued an order extending the time to file an answer to November 15. No answer has been received.

Good cause for failure to answer the complaint has not been shown. Under the rule set forth above, the allegations of the complaint are deemed admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

At all times material to this case, Respondent, a Delaware corporation, with an office and place of business in Beltsville, Maryland, has been engaged in providing trucking and hauling services. During the past 12 months, a representative period, Respondent, in the course and conduct of its business operations, purchased and received at its Beltsville facility goods and services valued in excess of \$50,000 directly from points located outside the State of Maryland.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Drivers, Chauffeurs and Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. Respondent's Interference With Employees' Section 7 Rights

Respondent, through actions of its vice president and general manager, Kevin Ecroyd, engaged in the following conduct:
(a) on or about April, May, or June, the exact dates being

unknown, Ecroyd solicited grievances from employees by asking them what he could do to keep the Union out; (b) on or about April, May, or June, the exact dates being unknown, Ecroyd promised employees better truck maintenance in an effort to keep the Union out; (c) on or about April, May, or June, and the first week of July, the exact dates being unknown, Ecroyd verbally threatened employees by telling them that if the Union came in he would have to close the doors, and on July 23 informed employees in writing that Respondent would cease operations within approximately 30 days; (d) on various occasions from on or about April 15 through July 9, Ecroyd interrogated employees by asking them whether Respondent would win the representation election; (e) on various occasions from on or about April 15 through July 9, Ecroyd solicited employees to urge other employees to vote against the Union; (f) on or about July 14, Ecroyd threatened employees with an implied loss of pay and benefits by telling them that all the money for Respondent's legal fees was coming out of the drivers' pockets; (g) on or about July 14, Ecroyd threatened employees with loss of access to management by informing employees that he did not have to deal with employees but would only have to deal with a shop steward; (h) on or about the first week of July, the exact date being unknown, Ecroyd interrogated employees by asking them if they had heard any rumors about how things were going; (i) on or about the first week of July, the exact date being unknown, Ecroyd requested that employees spy and report on other employees by telling them to keep their eyes and ears open and keep him informed of what was

happening; (j) on or about July, the exact date being unknown, Ecroyd created the impression of surveillance by telling an employee that he was the one pushing to get the Union in. Respondent by this conduct interfered with, restrained, and coerced employees in the exercise of the rights guaranteed by Section 7. Respondent thereby violated Section 8(a)(1) of the Act.

B. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All truck drivers, mechanics and tiremen employed by Respondent at its Beltsville, Maryland location, but excluding all other employees, guards and supervisors as defined in the Act.

2. The certification

On July 9, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted in Case 5--RC--11774 under the supervision of the Regional Director for Region 5, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 27, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

C. Respondent's Failure To Bargain

On or about July 9, Respondent (a) unilaterally and without bargaining with the Union instituted a practice of issuing

written reprimands to employees; and (b) continued to maintain and enforce the practice of issuing written reprimands by issuing such a notice to employee Jay Cook as well as to other employees. The complaint alleges that by this conduct Respondent violated Section 8(a)(5) and (1) of the Act.

Accordingly, we find that Respondent has, since July 9, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with the operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom. We shall also order it to take certain affirmative action designed to effectuate the policies of the Act.

We have found that, since on or about July 9, Respondent has instituted and maintained a practice of issuing written reprimands to employees, including Jay Cook. In order to

effectuate the purposes of the Act, we shall order Respondent to expunge from its files any written reprimand, issued since July 9 pursuant to that unilaterally instituted practice, or reference thereto, for Jay Cook or any other employee, and to notify them in writing that this has been done and that evidence of the unlawful reprimand will not be used as a basis for future personnel actions against them.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

Conclusions of Law

1. Maryland Equipment, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Drivers, Chauffeurs and Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All truck drivers, mechanics and tiremen employed by Respondent at its Beltsville, Maryland location, but excluding all other employees, guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 27, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By the following actions Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act:

(a) Soliciting grievances from employees by asking them what could be done to keep the Union out.

(b) Promising employees better truck maintenance in an effort to keep the Union out.

(c) Threatening employees by telling them that if the Union came in Respondent would close its doors on July 23, informing employees in writing that it would cease operations in approximately 30 days, telling employees that the money for its legal fees came from the drivers' pockets, and telling employees that Respondent would no longer have to deal with employees but would only have to deal with shop stewards.

(d) Interrogating employees by asking them whether Respondent would win the representation election, and asking employees, on or about the first week of July, how things were going.

(e) Asking employees to urge other employees to vote against the Union.

(f) Asking employees to spy and report on other employees by telling them to keep their eyes and ears open and to keep it informed of what was happening.

(g) Creating the impression of surveillance by telling an employee that he was the one pushing to get the Union in.

6. By refusing on or about July 9 to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit by unilaterally and without bargaining with the Union instituting a practice of issuing written reprimands, and by maintaining and enforcing such practice, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Maryland Equipment, Inc., Beltsville, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Soliciting grievances from employees by asking them what can be done to keep out Drivers, Chauffeurs and Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Union herein.

(b) Promising employees increased benefits to keep out the Union.

(c) Threatening employees with plant closure because of their union activities.

(d) Threatening employees by telling them that Respondent's legal fees come from the employees' pockets.

(e) Threatening employees by telling them that Respondent will not have to deal with employees directly, but only through shop stewards if the Union is the employees' representative.

(f) Interrogating employees by asking about the degree of employee support for the Union.

(g) Asking employees to urge their coworkers to vote against the Union.

(h) Asking employees to spy and report on other employees with regard to their union activities.

(i) Creating the impression of surveillance by telling any employee that he or she is pushing to get the Union in.

(j) Failing and refusing to bargain collectively with Drivers, Chauffeurs and Helpers Local Union No. 639, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of its employees in the appropriate unit set forth below, by unilaterally and without bargaining with the Union instituting a practice of issuing written reprimands to employees and by maintaining and enforcing such practice.

All truck drivers, mechanics and tiremen employed by Respondent at its Beltsville, Maryland location, but excluding all other employees, guards and supervisors as defined in the Act.

(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request of the above-named labor organization rescind the policy of issuing written reprimands.

(b) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to any system of written reprimands and, if an understanding is reached, embody such understanding in a signed agreement.

(c) Expunge from its files any written reprimands issued to Jay Cook and to any other employees that were issued pursuant to the policy initiated and maintained since July 9, 1982, and notify them in writing that this has been done and that the written reprimands will not be used as a basis for future personnel actions against them.

(d) Post at its Beltsville, Maryland, facility copies of the attached notice marked "'Appendix.'"³ Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily

³ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

Dated, Washington, D.C. February 23, 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT solicit grievances from employees by asking what can be done to keep out the Union.

WE WILL NOT promise employees increased benefits to keep out the Union.

WE WILL NOT threaten employees with plant closure because of their union activities.

WE WILL NOT threaten employees by telling them that our legal fees come from our employees' pockets.

WE WILL NOT threaten employees by telling them that we will not have to deal with employees directly but only through shop stewards if the Union is our employees' representative.

WE WILL NOT interrogate employees by asking them about how much employee support there is for the Union.

WE WILL NOT ask employees to urge their coworkers to vote against the Union.

WE WILL NOT ask employees to spy and report on other employees with regard to their union activities.

WE WILL NOT create the impression of surveillance by telling any employee that he or she is pushing to get the Union in.

WE WILL NOT refuse to bargain collectively with Drivers, Chauffeurs and Helpers Local Union No. 639, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit described below, by unilaterally and without bargaining with the Union instituting a practice of issuing written reprimands to employees and by maintaining and enforcing such practice.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL upon request of the above-named Union rescind the policy of issuing written reprimands to employees.

WE WILL expunge from our files any written reprimands issued to Jay Cook and any other employees since July 9, 1982, and WE WILL notify them in writing that this has been done and that the written reprimands will not be used as a basis for future personnel actions against them.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to any policy of issuing written reprimands, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All truck drivers, mechanics and tiremen employed by the Employer at our Beltsville, Maryland location, but excluding all other employees, guards and supervisors as defined in the Act.

MARYLAND EQUIPMENT, INC.

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Candler Building, 109 Market Place, Suite 4200, Baltimore, Maryland 21202, Telephone 301--962--2772.